

Judge _____

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA

Plaintiff,

V.

CITY OF RENTON
Renton City Hall
1055 S. Grady Way
Renton, WA 98057

and

CITY OF VANCOUVER
210 East 13th Street
Vancouver, WA 98668

Defendants.

COMPLAINT FOR DECLARATORY RELIEF AND REFUND

The United States of America complains and alleges as follows:

JURISDICTION

1. This is a civil action instituted for the purpose of obtaining a declaratory judgment that the United States is not liable for stormwater management charges imposed by the City of Renton and the City of Vancouver before January 4, 2011, and to seek a refund of amounts wrongfully paid for stormwater charges.

2. This action is brought by the United States under the direction of the Attorney General of the United States and has been brought to vindicate the sovereign rights and pecuniary interests of the United States.

3. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1345, because this is an action arising under the United States Constitution and is brought by the United States of America in order to obtain a declaratory judgment regarding the liability of the United States for the stormwater charges imposed before January 4, 2011.

4. This is an appropriate action for a declaratory judgment, as authorized by Title 28 U.S.C. § 2201, because an actual controversy, as is more fully described below, has arisen and now exists between the United States and the defendants concerning their respective rights and obligations. The United States is suffering actual and threatened harm by virtue of the actions of the defendants.

PARTIES

5. The plaintiff is the United States of America.

6. The defendant City of Renton is a governmental entity within the jurisdiction of this Court. It is named as a defendant because it is billing stormwater charges relating to periods before January 4, 2011, against property owned by the United States and administered by the Bonneville Power Administration, an entity of the United States.

7. The defendant City of Vancouver is a governmental entity within the jurisdiction of this Court. It is named as a defendant because it is billing stormwater charges relating to periods before January 4, 2011, against property owned by the United States and administered by the Bonneville Power Administration, an entity of the United States.

COUNT I

The Stormwater Charges Are a Tax Against Property of the United States Which the United States Is Constitutionally Immune from Paying

8. Plaintiff incorporates the allegations set forth in paragraphs 1 through 7 of the complaint.

9. The defendants impose stormwater charges against the owners of certain parcels of real property for the purpose of building and maintaining stormwater treatment facilities. Renton Municipal Code §§8-2-1 et. seq., and Vancouver Municipal Code §§ 14.09 et. seq.

10. The purpose of the stormwater charges is to enable defendants to treat stormwater and reduce water quality degradation before stormwater is deposited into public waterways.

11. The stormwater charges apply to all land within Renton and Vancouver, and are assessed based on the percentage of developed surface area on the property.

12. The stormwater charges may be calculated at a reduced rate, but not eliminated, if the property does not contribute stormwater to defendants' stormwater system.

13. The stormwater charges may be calculated at a reduced rate, but not eliminated, if the property owner installs a system to treat stormwater equal to or in excess of legal requirements for treatment of stormwater.

14. The funds collected from the charges are used to provide a benefit to the public by maintaining and improving water quality standards.

15. The United States is the owner of two parcels of real property subject to stormwater charges. The first property is located in the City of Renton. This property is located at 2500 Royal Hills Drive, Renton, Washington, and known as the Maple Valley Substation.

16. The second property is in the City of Vancouver, located at 5411 NE Hwy 99 Vancouver, Washington, and is known as the Ross Complex.

1 17. In a letter dated May 5, 2011, the City of Renton threatened to shut off
2 municipal water service to the Maple Valley Substation, for failure to pay the stormwater
3 charges related to periods June 2009 to December 2010. This facility provides power to
4 the south Seattle metropolitan area.

5 18. The City of Renton has agreed to not shut off municipal water services to the
6 Maple Valley Substation until at least 60 days after the entry of a final judgment in this
7 matter, including any appeals.

8 19. In a letter dated May 4, 2011, the City of Vancouver threatened to shut off
9 municipal water service to the Ross Complex, for failure to pay the stormwater charges
10 related to periods January 2010 to December 2010. This facility consists of 85 buildings,
11 accommodating 950 employees, and serves as the control center for generating and
12 transmitting of electricity throughout the Pacific Northwest.

13 20. The City of Vancouver has agreed to not shut off municipal water services to
14 the Ross Complex until at least 60 days after the entry of a final judgment in this matter,
15 including any appeals.

16 21. Because Bonneville Power Administration is an entity of the United States,
17 any amounts paid by it for stormwater charges are payments made by the United States.

18 22. The United States did not voluntarily seek a benefit or service for the
19 properties before defendants billed the stormwater charges.

20 23. The stormwater charges are not imposed for a service or benefit provided to
21 the United States.

22 24. The United States is constitutionally immune from the stormwater charges
23 imposed before January 4, 2011, because they are a tax. The United States has not
24 waived its immunity to these taxes for periods prior to January 4, 2011.

COUNT II

The United States Is Not Liable for Penalties

25. Plaintiff incorporates herein the allegations set forth in paragraphs 1 through 24 of the complaint as if fully stated herein.

26. Defendants have charged the United States' Bonneville Power Administration penalties for failing to pay the stormwater charges after it stopped paying the stormwater charges to Renton in June, 2009, and Vancouver in January, 2010.

27. In the event the United States is liable for the stormwater charges, the United States has not waived its sovereign immunity and is not liable for penalties for late payment.

COUNT III

The United States Is Entitled to a Refund of Stormwater Charges Paid by its Bonneville Power Administration to the City of Renton

28. Plaintiff incorporates the allegations set forth in paragraphs 1 through 27 of the complaint as if fully stated herein.

29. From July 12, 2005, through June 30, 2009, the United States' Bonneville Power Administration wrongfully paid stormwater charges billed to it by defendant City of Renton in the amount of \$38,606.

30. Because the stormwater charges imposed before January 4, 2011, are an unconstitutional tax, the United States is entitled to a refund of \$38,606, from the City of Renton plus prejudgment interest because the stormwater charges were wrongfully paid.

COUNT IV

The United States Is Entitled to a Refund of Stormwater Charges Paid by its Bonneville Power Administration to the City of Vancouver

31. Plaintiff incorporates the allegations set forth in paragraphs 1 through 27 of the complaint as if fully stated herein.

32. From July 12, 2005, through January 31, 2010, the United States' Bonneville Power Administration wrongfully paid stormwater charges billed to it by defendant City of Vancouver in the amount of \$443,148.

33. Because the stormwater charges imposed before January 4, 2011, are an unconstitutional tax, the United States is entitled to a refund of \$443,148, from the City of Vancouver plus prejudgment interest because the stormwater charges were wrongfully paid.

RELIEF SOUGHT

WHEREFORE, the United States prays as follows:

A. That this Court enter a judgment declaring that the stormwater charges imposed by the City of Renton, under Renton Municipal Code §§8-2-1 through 8-2-7, and the City of Vancouver, under Vancouver Municipal Code §§14.09.010 through §14.09.130, are a unconstitutional tax, and therefore the United States is not liable to the defendants for the charges imposed before January 4, 2011;

B. That this Court enter a judgment directing defendants to return stormwater charge amounts paid by Bonneville Power Administration from July 12, 2005, through January 4, 2011, to the United States, along with prejudgment interest;

C. That this Court direct the defendants and its necessary employees, agents, attorneys, and all persons acting in concert with them who shall receive notice of this Court's order to remove the United States as subject to the stormwater charges imposed before January 4, 2011;

D. That this Court direct the defendants and its necessary employees, agents, attorneys, and all persons acting in concert with them who shall receive notice of this Court's order to remove the United States as subject to penalties for failure to pay the stormwater charges;

E. That this Court award the United States such other and further relief as this Court deems just and proper.

Date: July 12, 2011.

Respectively submitted,

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